Civil Revision No. 6404 of 2005

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 6404 of 2005

Date of decision: 13.12.2006

Sarwan Singh

..... Petitioner.

Versus

Swarna

..... Respondent.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. Ramesh Sharma, Advocate
for the petitioner.

Mr. S.S. Walia,Advocate
for respondent nos. 1 to 4.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed challenging order dated 06.10.2004 vide which the execution application filed by the petitioner- decree holder was dismissed and an application filed by the judgment debtor for returning of cow and buffaloes etc. was also dismissed.

The application was filed to execute a decree dated 26.03.1991 in the suit titled as Sarwan Singh v. Swarna . The decree was for recovery of Rs.45,000/-.

A reading of the order passed by the Executing Court would show that the petitioner had earlier filed an execution application on 14.12.1992 for executing the same decree. During the course of the proceedings of that execution petition, attachment of property of the judgment debtor was ordered. Attachment was effected and one cow, five buffaloes and one diesel engine belonging to the judgment debtor were attached and were handed over to one Surender Singh, brother of the decree holder Sawran Singh as Superdar of the property. Learned counsel for the respondents has produced before me a evaluation made at the time of attachment signed by Surinder Singh son of Nazar Singh and witnessed by Roshan Lal son of Pritta giving the total value of the attached property as Rs.47,000/-. Subsequently sale of the attached property was also ordered. However on 11.01.1999 the petitioner withdrew the said execution application.

Thereafter the petitioner again filed an execution petition on 22.03.1999. In this execution petition an order was passed on 07.02.2001 whereby fresh attachment of articles of judgment debtor was ordered by the Executing Court. This order was challenged by the judgment debtor by filing Civil Writ Petition No. 1492 of 2001 in this court which was decided on 08.10.2002 with the following order:-

> "Heard.
>
> The execution application was dismissed as withdrawn and the proceedings of the sale were kept, intact vide order dated 11.1.1999. The property, after attachment belonging to the J.D., was handed over to Surinder Singh, respondent,

brother of the decree holder. There is no mention as to where the attached property had gone. The executing Court had wrongly issued an order for fresh attachment of the articles of the judgment debtors without dealing with the property which was already attached and was handed over to Surinder Singh. In such circumstances, the order dated 7.2.2001 is set aside and the executing Court directing to determine the following issues:-

i) Whether the attachment continued or subsisted in view of the order dated 11.1.1999?

ii) Whether the property belonging to the judgment debtors as mentioned in Annexure P-1, was handed over to Surinder Singh, Sapurdar and he was liable to account for that property or the document, Annexure P-1, is just a paper transaction and no property was ever handed over to Surinder Singh?

iii) If the subsistence allowance is claimed by the Sapurdar i.e. Surinder Singh, then the same will also be determined by the executing Court as to whether he is entitled to the same or not?

The trial Court is directed to give finding on these issues after giving opportunity to both the parties to lead evidence and then to proceed further in accordance with law. The parties, through their counsel, are directed to appear before the executing Court on 29.10.2002.

The revision petition is disposed of in the above terms.

Sd/- K.C. Gupta,
October 08, 2002 Judge."
Khurmi"

Thereafter the matter was remanded back to the executing Court . After examining the entire matter in the light of the issues framed by this Court, the executing Court has returned the following findings:-

> "So, in view of this observations of the Hon'ble High Court and evidence as well as previous execution application and nature of the property, it stands fully proved on the file that this is matter in between two brothers i.e. Decree Holder Swaran Singh and his brother Surinder Singh who was sapurdar of the property which was attached because it stands fully proved on the file that the then Bailiff Kishan Chand entrusted the property to none else but to Surinder Singh and the application filed by the J.D., in this regard stands fully proved from the evidence and other circumstances as stated above. So, this application of the Decree Holder that the JD be directed to hand over buffalows and cows etc. to him is not executable at this stage, because buffalows and cows are having such type of nature that, if age of the cows etc. is calculated as alleged that is not more than ten years, the second question is to the effect that how to identify those buffaloes and cows, because no description or identification was ever given by either of the

parties including the Court employee like Kishan Chand, Bailiff. So, such type of execution becomes impractable to execute. So, the execution application stands dismissed."

A reading of the findings would show that the executing Court has found that earlier property of the judgment debtor had been attached. The said property had been handed over to Surinder Singh as superdar. The property remained with him. It is therefore that the Court has recorded a conclusion that the decree was satisfied and the execution application was dismissed. In the light of aforesaid facts the executing Court has also rightly dismissed the application filed by the judgment debtor for return of buffaloes and cows.

I am of the opinion that the trial Court has recorded the findings of fact on the basis of evidence led before it and the same warrant no interference by way of present revision petition. The same is accordingly dismissed.

December 13, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**